

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Gerald Martin and Sharon Reid, Co-Administrators of the Estate of Harriet Martin, deceased

(b) County of Residence of First Listed Plaintiff Montgomery
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

James I. Devine, Esquire, 509 Swede Street, Norristown, PA 19401; (610) 292-9300

DEFENDANTS

Mr. Charles E. Johnson, Acting Secretary of the United States Department of Health and Human Services

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input checked="" type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Medicare Secondary Payer Lien Challenge

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/22/2009

SIGNATURE OF ATTORNEY OF RECORD

James I. Devine

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

APPENDIX I

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

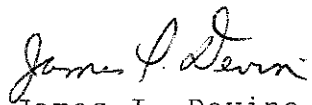
CASE MANAGEMENT TRACK DESIGNATION FORM

Gerald Martin and Sharon Reid,	CIVIL ACTION
Co-Administrators of the	
Estate of Harriet Martin, dec'd	
v.	
Mr. Charles E. Johnson, Acting	
Secretary of Health and Human	
Services	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>04/22/09</u>	 <u>James I. Devine</u>	<u>Plaintiffs</u>
Date	Attorney-at-law	Attorney for
<u>610-292-9300</u>	<u>610-270-0503</u>	<u>egaraymiller@gmail.com</u>
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Gerald Martin and Sharon Reid,
Co-Administrators of the :
Estate of Harriet Martin :
V. :
Mr. Charles E. Johnson, Acting
Secretary of the United States
Department of Health and
Human Services

Civil Action

No: _____

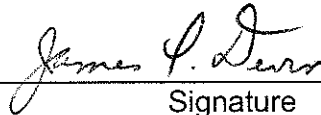
DISCLOSURE STATEMENT FORM

Please check one box: **N/A**

- ☐ The nongovernmental corporate party, _____,
, in the above listed civil action does not have any parent corporation and
publicly held corporation that owns 10% or more of its stock.
- ☐ The nongovernmental corporate party, _____,
, in the above listed civil action has the following parent corporation(s) and
publicly held corporation(s) that owns 10% or more of its stock:

04/22/09

Date


Signature

Counsel for: plaintiffs

Federal Rule of Civil Procedure 7.1 Disclosure Statement

- (a) WHO MUST FILE; CONTENTS. A nongovernmental corporate party must file two copies of a disclosure statement that:
- (1) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or
 - (2) states that there is no such corporation.
- (b) TIME TO FILE; SUPPLEMENTAL FILING. A party must:
- (1) file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and
 - (2) promptly file a supplemental statement if any required information changes.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERALD MARTIN and SHARON REID,	:	
Co-Administrators of the Estate of	:	CIVIL ACTION No.:
Harriet Martin, deceased	:	
332 Centre Avenue	:	Re: HIC No.: ***-**-9925A
Jeffersonville, PA 19403	:	
	:	ALJ Appeal Docket No.: 1-166193001
v.	:	
	:	
MR. CHARLES E. JOHNSON, ACTING	:	
SECRETARY OF THE UNITED STATES	:	
DEPARTMENT OF HEALTH AND	:	
HUMAN SERVICES	:	
200 Independence Avenue, S.W.	:	
Washington, D.C. 20201	:	

COMPLAINT

PARTIES

1. The plaintiffs are Gerald Martin and Sharon Reid, adult individuals who are the duly appointed personal representatives of the estate of Harriet Martin. Gerald Martin resides at 332 Centre Avenue, Jeffersonville, Pennsylvania 19403. Sharon Reid resides at 6241 Arch Street, Philadelphia, Pennsylvania 19139.
2. The defendant is Mr. Charles E. Johnson, Acting Secretary of the United States Department of Health and Human Services, whose office is located at 200 Independence Avenue, S.W., Washington, D.C. 20201.

JURISDICTION

3. This Court possesses subject matter jurisdiction pursuant to 42 U.S.C.A. §405 (g).

VENUE

4. Venue is proper in the United States District Court for the Eastern District of Pennsylvania pursuant to 42 U.S.C. §1395 ff(b).

FACTS

5. The plaintiffs herein filed a lawsuit captioned Gerald Martin and Sharon Reid, Co-Administrators of the Estate of Harriet Martin v. Albert Einstein Medical Center and Lisa Medvetz, M.D., C.C.P. Philadelphia County, November Term, 2003, No. 3100 on November 21, 2003, arising from the death of their mother, Harriet Martin, in December, 2001.
6. In said lawsuit, plaintiffs claimed that their mother's death was the result of medical professional negligence that occurred during an Albert Einstein Medical Center ("AEMC") hospitalization that started with Harriet Martin's presentation to the Emergency Department on November 17, 2001. Plaintiffs did not claim that the entirety of the care rendered during that hospitalization was negligent or was necessitated because of medically improper care. Rather, plaintiffs claimed that their mother, Harriet Martin, died because of an unreasonable delay in receiving proper treatment that resulted from certain improper care. Plaintiffs' decedent, Harriet Martin, presented to Albert Einstein Medical Center with certain symptoms and she needed to be evaluated, diagnosed and treated for her underlying medical problem irrespective of the negligence that ensued.

7. The aforementioned lawsuit, Martin v. AEMC, was ultimately settled amicably by the parties.
8. After the underlying case was resolved, Medicare asserted a claim for \$72,089.04 for medical bills paid by Medicare for Harriet Martin's entire November 17, 2001 hospitalization at the Albert Einstein Medical Center. In accordance with the law, Medicare reduced said amount to reflect its proportionate share of procurement costs, including attorney fees and a pro-rata share of case costs.
9. Through counsel, plaintiffs notified Medicare's contractor of their objection to the amount of Medicare's claim, explaining in detail the basis for their objection. The essence of the objection is that Medicare is not entitled to be reimbursed for payment it made for treatment that the beneficiary, Harriet Martin, needed which is unrelated to the medical negligence. Stated differently, Medicare is entitled to be reimbursed only for those medical expense payments it made for treatment that was necessitated by medical negligence. Plaintiffs paid the full amount of Medicare's claim under protest, reserving their rights.
10. Plaintiffs pursued all required administrative procedures and appeals before filing this action.
11. By letter dated February 23, 2009, the Department of Health and Human Services, Medicare Appeals Council notified plaintiffs of its decision upholding the Administrative Law Judge's decision which had affirmed Medicare's determination that plaintiffs owed Medicare the entire amount Medicare paid for

the AEMC hospitalization bill, without reduction of any amount reflecting the payment for care that Harriet Martin needed and received unrelated to the medical negligence claim.

12. Plaintiffs file the instant lawsuit seeking partial reimbursement of the amount paid to Medicare because certain of the medical services provided to Harriet Martin during her November 17, 2001 AEMC admission were not as a result of the professional negligence of healthcare providers at AEMC, but instead a portion of Harriet Martin's AEMC hospital bill was incurred as a result of her underlying medical condition that caused her to be hospitalized in the first place. As such, Medicare is not entitled to be reimbursed the full amount that Medicare paid for the November 17, 2001 AEMC hospitalization. Medicare's decision to require full reimbursement of the entire amount Medicare paid for the November 17, 2001 Albert Einstein Medical Center admission is plainly erroneous, and Medicare failed to meet its burden of demonstrating that all of the care Harriet Martin received during that hospital admission was the result of medically improper care. Medicare, the Honorable Administration Law Judge and the Medicare Appeals Council applied an erroneous legal standard in determining the case.
13. The amount in controversy exceeds \$1,220.00.

WHEREFORE, plaintiffs request judgment in their favor and against the defendant for an amount not in excess of \$150,000.00, plus costs and whatever damages the Court deems just.

LAW OFFICE OF JAMES I. DEVINE

Date: April 22, 2009

By:



JAMES I. DEVINE, ESQUIRE

Attorney for Plaintiffs

509 Swede Street, Norristown, PA 19401

Telephone: (610) 292-9300

Attorney I.D. No. 39270